

### ***Remarks***

Claims 1 - 5, 7 - 12 and 17 remain in this application. Claims 6 and 13 - 16 have been canceled. Claim 17 has been added.

The specification has been amended to reflect the Dade County Regulations and to make the specification consistent with the original claims in regard to the interstice size of the barrier panel.

A terminal disclaimer is attached hereto for the purpose of removing the judicially created obvious-type double patenting rejection applied to claim 1. The terminal disclaimer disclaims any part of the term of a patent to be issued on this application beyond 20 years from the date of Dec. 4, 2001, the issue date of U. S. Patent No. 6,325,085.

Claim 9 has been amended to transform the claim into an independent claim. This original claim has not been rejected in the current outstanding action and it is assumed that the claim is allowable in substance. Dependent claims 10 - 12 depend from independent claim 9 and are also considered allowable.

#### **Rejections under 35 USC 112**

Claims 1, 12 and 13 stand rejected as indefinite in the use of the term, "minimum deflection distance," and "a maximum deflection of approximately 20% before failure and air permeability of approximately 250 cfm at a wind force of 1 inch Hg." Also, in claim 12 the term, "means" has no antecedent basis. The offending terminology has been canceled from the claims obviating the rejection. In claim 12 the amendment removes the *non sequitur*.

### Rejections under 35 USC 103

Claims 1 - 8 and 13 - 16 stand rejected as obvious in view of Gitlin et al and the published Dade County Code. Gitlin et al teach the use of a material referred to as, "shadecloth," 31 to cover the openings in a harness consisting of inter-connected straps 25, 26. The shadecloth appears to be in squares with an inter-connected strap on each side. At lines 55 - 57, col. 3 of Gitlin et al, the tie down straps 27 are disclosed as being 4 feet apart. The drawings show that the tie down straps correspond to the straps 25 therefore, the span of the shadecloth is approximately 4 feet in the horizontal direction. The harness is shown as extending from the ground on one side of a structure to the ground on the other side. The harness has a series of straps running in the vertical direction over the structure and another series running in the horizontal direction around the structure. In the preferred embodiment there is a continuous strap extending from a ground anchor on one side of the structure to an anchor on the other side. This harness furnishes the strength of the device with the shadecloth reducing wind velocity transiting the harness between the straps. The structural characteristics of the straps, *per se*, are not disclosed by Gitlin et al other than a tensile strength of 3000 pounds.

The reference does not disclose any empirical or theoretical wind data in relation to the use of the device. Gitlin et al do disclose that the entire assembly, of straps and shadecloth, has a deflection over span, shown in the graph in Fig. 10, with the preferable shade level of the shadecloth at, " 60 to 75%." Gitlin et al teach a pre-loading of the assembly with 50 pounds tension force ( lines 61 - 65, col. 4). It is assumed that any wind force that overcomes the pre-loading causes deflection that terminates, as shown on the graph, and remains static until rupture at 3000 pounds.

Claim 1 has been amended to relate the wind force to the deflection over span. Gitlin et al do not disclose such a relationship. The claims have also been amended to recite that the panel spans the frangible opening which is not true of the Gitlin et al harness. Further, claim 1 requires that the barrier block objects greater than 3/16 inch. Gitlin et al teach that the smallest preferable mesh of the shade cloth is 60%. This mesh size is almost twice the size opening recited in the instant claims. With regard to dependent claims 5 and 7, the prior art cited by the Examiner does not show any coating to be known for woven wind barriers. The only teaching of such a laminated structure is the applicant's own disclosure.

The Examiner takes the position that to change the size of the mesh in the Gitlin et al device would be obvious to one of ordinary skill in the art since the Dade County Code legislates the size projectile considered to be dangerous during hurricane winds.

It is very clear that Gitlin et al is not concerned with the harness stopping missiles born by the wind in the recitation of,

"Further protection for windows and the vertical sides of the structure can be accommodated in a further embodiment of the invention by suspending an additional protective assembly, such as additional shade cloth or protective fabric 31 under the harness to stop particles that might otherwise blow through the shade cloth and damage the windows or sides of the protected structure."

This disclosed approach shows that Gitlin et al teach away from changing the mesh size of the shade cloth and merely add layers of shade cloth to critical areas. Therefore,

there is no motivation to modify the harness as suggested by the Examiner.

There is no connection between the laws of Florida and the Gitlin et al harness, other than that found in the applicant's own disclosure. As the Examiner states, in the action, he is using the applicant's disclosure against him. Patent case law is clear in prohibiting such tactics.

It is requested that this petition be granted and this amendment be entered because this amendment could not have been presented earlier since there was no art rejection on the record.

phone 561 625-6575  
fax 561 625-6572

McHale & Slavin, P. A.  
2855 PGA Blvd.  
Palm Beach Gardens, FL 33410

A handwritten signature in cursive script, reading "C. Fred Rosenbaum", written over a horizontal line.

C. Fred Rosenbaum  
Registration No. 27110